

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gabriella Carpenter	Team: Squad #5	CCRB Case #: 201708175	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourtesy
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Wed, 09/27/2017 12:50 AM	Location of Incident: New Lots Avenue and Atkins Avenue	Precinct: 75	S.O.L. Expires: 03/27/2019	
Date/Time CV Reported Wed, 09/27/2017 2:34 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 10/04/2017 12:59 PM	

Complainant/Victim	Type	Home Address
1. A [REDACTED] B [REDACTED]	Comp/Victim	[REDACTED] Brooklyn NY 11208
2. T [REDACTED] B [REDACTED]	Reporting Non-Witness	[REDACTED] Brooklyn NY 11208

Subject Officer(s)	Shield	TaxID	Command
1. POM J [REDACTED] R [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2. POM Sean Keegan	12338	954994	075 PCT
3. POM N [REDACTED] S [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4. An officer			[REDACTED]

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT T [REDACTED] M [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
A . POM Sean Keegan	Abuse of Authority: Police Officer Sean Keegan stopped A [REDACTED] B [REDACTED]	A . Substantiated
B . POM N [REDACTED] S [REDACTED]	Abuse of Authority: Police Officer N [REDACTED] S [REDACTED] stopped A [REDACTED] B [REDACTED]	B . Substantiated
C . POM J [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer J [REDACTED] R [REDACTED] stopped A [REDACTED] B [REDACTED]	C . Substantiated
D . POM Sean Keegan	Force: Police Officer Sean Keegan used physical force against A [REDACTED] B [REDACTED]	D . Unsubstantiated
E . POM N [REDACTED] S [REDACTED]	Force: Police Officer N [REDACTED] S [REDACTED] used a chokehold against A [REDACTED] B [REDACTED]	E . Unsubstantiated
F . POM Sean Keegan	Force: Police Officer Sean Keegan used physical force against A [REDACTED] B [REDACTED]	F . Substantiated
G . An officer	Abuse of Authority: An officer frisked A [REDACTED] B [REDACTED]	G . Officer(s) Unidentified
H . An officer	Abuse of Authority: An officer searched A [REDACTED] B [REDACTED]	H . Officer(s) Unidentified
I . PO [REDACTED] Sean Keegan	Other: Police Officer Sean Keegan failed to prepare a stop and frisk report as required.	I . Other Misconduct
J . PO [REDACTED] N [REDACTED] S [REDACTED]	Other: Police Officer N [REDACTED] S [REDACTED] failed to prepare a stop and frisk report as required.	J . Other Misconduct
K . POM J [REDACTED] R [REDACTED]	Other: Police Officer J [REDACTED] R [REDACTED] failed to prepare a stop and frisk report as required.	K . Other Misconduct

### Case Summary

Sgt. T ■ M ■ of the 75<sup>th</sup> Precinct filed a complaint over the phone with the Internal Affairs Bureau on September 27, 2017 on behalf of A ■ B ■ after Mr. B ■ ■ ■ ■ ■, T ■ ■ ■ B ■ ■ called 911 and reported that officers had injured him; IAB generated log number ■ ■ ■ ■ ■ in response. The CCRB received the complaint on October 4, 2017.

On September 27, 2017, at approximately 12:50 a.m., Mr. B ■ ■ ■ was walking on New Lots Avenue at Atkins Avenue in Brooklyn when he was stopped by Police Officer J ■ ■ ■ R ■ ■ ■ Police Officer Sean Keegan, and Police Officer N ■ ■ ■ S ■ ■ ■ of the 75<sup>th</sup> Precinct (**Allegations A through C: Abuse of Authority, substantiated**). PO Keegan and PO S ■ ■ ■ allegedly grabbed Mr. B ■ ■ ■ shirt and neck, respectively (**Allegations D and E: Force, unsubstantiated**). Mr. B ■ ■ ■ ran away from the officers. According to Mr. B ■ ■ ■ once PO Keegan and PO S ■ ■ ■ reached him, PO Keegan punched him at least three times on the left side of his face (**Allegation F: Force, substantiated**). One of the officers patted down Mr. B ■ ■ ■ chest, waist, and legs, then entered both of his front pockets (**Allegations G and H: Abuse of Authority, officer unidentified**). The officers removed the handcuffs and let Mr. B ■ ■ ■ go without arresting or summoning him. None of the officers filed a stop and frisk report as was required (**Allegations I through K: Other Misconduct**).

### Findings and Recommendations

**Allegation A: Abuse of Authority: Police Officer Sean Keegan stopped A ■ ■ ■ B ■ ■ ■**

**Allegation B: Abuse of Authority: Police Officer N ■ ■ ■ S ■ ■ ■ stopped A ■ ■ ■ B ■ ■ ■**

**Allegation C: Abuse of Authority: Police Officer J ■ ■ ■ R ■ ■ ■ stopped A ■ ■ ■ B ■ ■ ■**

It is undisputed that Mr. B ■ ■ ■ was walking alone when an unmarked police vehicle carrying three plainclothes police officers drove alongside him, exited their vehicle, and approached him on foot. Mr. B ■ ■ ■ did not have any weapon on his person.

Mr. B ■ ■ ■ testified that he was merely walking home from work when an unmarked vehicle drove past him, made a U-turn to drive alongside him, plainclothes officers with guns and handcuffs visibly displayed exited the vehicle, approached him, asked for his identification, and physically grabbed him.

PO Keegan, PO S ■ ■ ■ and PO R ■ ■ ■ each testified that they were driving when they noticed Mr. B ■ ■ ■ walking alone and that he had a square or rectangular bulge in his front pants pocket. The bulge was described as either a six-inch square or a 6 inch by 10 inch rectangle. Mr. B ■ ■ ■ acknowledged carrying a cell phone and a wallet in his pants pockets.

PO S ■ ■ ■ testified that the object could have been either a wallet or cell phone, but that he thought it might also be a weapon. PO Keegan, who described the bulge as a 6 inch by 10 inch rectangle, said that he thought the object could have been either a gun or a knife. PO R ■ ■ ■ who described the bulge as a six-inch square, testified that he thought the bulge might be a gun.

No officer testified to seeing any portion of the object creating the bulge. No officer testified to seeing a weapon or any portion of an object that appeared to be a weapon—they only saw the square or rectangular bulge.

PO R ■ ■ ■ testified that Mr. B ■ ■ ■ did not do anything but walk, although Mr. B ■ ■ ■ may have had his hand in his pocket. PO Keegan testified that Mr. B ■ ■ ■ touched the object creating the bulge or entered that pocket, but that he did not see Mr. B ■ ■ ■ do anything else. PO S ■ ■ ■

said that Mr. B ■■■ was only walking, but after making eye contact with the officers, he hunched over, looked down and walked faster.

It is undisputed that the officers drove alongside Mr. B ■■■ who continued to walk alone. Officers testified that they followed Mr. B ■■■ in their car from “one minute or less” to up to two minutes—officer testimony differed on this point. PO Keegan testified that after driving alongside Mr. B ■■■ they asked if they could speak to him, and then exited the vehicle and approached Mr. B ■■■ on foot. PO S ■■■ and PO Keegan testified that they ordered Mr. B ■■■ to keep his hands out of his pockets.

PO Keegan testified that after driving alongside Mr. B ■■■ the officers had reasonable suspicion that Mr. B ■■■ possessed a weapon and could therefore stop him. PO Keegan testified that Mr. B ■■■ was not free to leave. PO S ■■■ and PO R ■■■ testified that Mr. B ■■■ was initially free to go, and that they just wanted to question him about the suspected weapon. It is undisputed that the only crime the officers suspected Mr. B ■■■ of was possession of a weapon.

A person is considered stopped if a reasonable person in the same situation would believe that the officers’ conduct was a significant limitation of their freedom. *People v. Hicks*, 68 N.Y.2d 234, 240 (1986) (BR 07). Officers are permitted to stop an individual if they have reasonable suspicion that the individual is committing, has committed, or is about to commit a crime; reasonable suspicion cannot be generated by innocuous behavior alone. *People v. DeBour*, 40 N.Y.2d 210, 216 (1976) (BR 06).

Regardless of whose exact version of events is credited, the investigation determined that Mr. B ■■■ was stopped based on the undisputed circumstances—three officers drove alongside Mr. B ■■■ for up to two minutes while he was walking alone, two officers exited the vehicle and approached him with their guns and handcuffs visible, and they proceeded to ask him questions and issue him orders as they confronted him on foot. A reasonable person in the same situation would believe that the officers’ conduct was a significant limitation of their freedom. The fact that Mr. B ■■■ was alone adds to this reasonable belief, because it suggests that the officers were focusing solely on Mr. B ■■■. The fact that there were three officers together adds to the reasonable belief—it suggests that it was not an individual officer’s whim or curiosity, but rather a team of three who wished to address Mr. B ■■■. The fact that the officers followed Mr. B ■■■ for up to two minutes in their car adds to the reasonable belief, because continuing to walk did not end the encounter, and the police persisted by asking him questions, exiting the vehicle, and issuing commands. The fact that the officers exited their vehicle and approached Mr. B ■■■ on foot with their guns and handcuffs visible adds to the reasonable belief, because the guns and handcuffs display the officers’ authority, giving weight to their actions of walking directly towards Mr. B ■■■ questioning him, and issuing commands. Taken together, a reasonable person in Mr. B ■■■ same position would believe the officers’ conduct was a significant limitation of his freedom. This is consistent with PO Keegan’s perception that Mr. B ■■■ was not free to leave.

The officers lacked justification to stop Mr. B ■■■. Even if each action attributed to Mr. B ■■■ is credited (testimony was inconsistent on this point)—that Mr. B ■■■ had a square or rectangular bulge in his pocket, that Mr. B ■■■ touched or went inside his pocket, and that Mr. B ■■■ hunched his body and sped up his pace upon sight of the officers—these observations alone do not support reasonable suspicion. All of the reported observations are innocuous in nature. Reaching inside a pocket or touching an item inside a pocket, avoiding eye contact, hunching over, and speeding up are each regular, innocuous actions, and are consistent with an innocent person walking home alone at night while an unfamiliar car drives alongside them. The only crime the officers testified they suspected Mr. B ■■■ of was possession of a weapon, yet they



did not observe a weapon, any portion of a weapon, or even a shape primarily associated with a weapon. They saw a square or a rectangular bulge. It would be reasonable to suspect that the bulge was an object like a cell phone or wallet, as was the case here, and as PO S█████ testified it could have been. It was not reasonable to suspect that the bulge was a weapon.

Given that the officers stopped Mr. B█████ and that they lacked reasonable suspicion when they stopped him, the stop was not justified. It is therefore recommended that **Allegations A-C be closed as substantiated.**

**Allegation D: Force: Police Officer Sean Keegan used physical force against A█████ B█████**  
**Allegation E: Force: Police Officer N█████ S█████ used a chokehold against A█████ E█████**

It is undisputed that PO Keegan and PO S█████ initially approached Mr. B█████ on foot. Mr. B█████ testified that he was asked for his ID, so he reached into his left front pocket to get it. PO S█████ grabbed Mr. B█████ neck and PO Keegan grabbed his shirt. In response, Mr. B█████ pulled away and ran from the officers, because he feared for his life.

PO S█████ testimony was as follows. As he and PO Keegan approached Mr. B█████ PO Keegan ordered Mr. B█████ to keep his hands out of his pocket. Mr. B█████ reached his hand into the pocket with the square or rectangular object. The officers told him to keep his hand out of his pocket but he did not remove it. PO S█████ and PO Keegan both moved toward Mr. B█████ to take his hand out of his pocket. PO S█████ grabbed Mr. B█████ elbow with one hand and tried to slide down to his wrist but he was not sure if he was able to fully grab onto Mr. B█████ arm. PO S█████ was not paying attention to how PO Keegan touched Mr. B█████ and did not know where he touched him. PO S█████ denied making contact with Mr. B█████ neck. Some part of Mr. B█████ shirt ripped when the officers grabbed him but PO S█████ did not know which officer caused it. Mr. B█████ used both of his hands to push the officers' hands off of him. Mr. B█████ ran northbound and PO Keegan and PO S█████ followed him on foot while PO R█████ followed in the car.

PO Keegan's testimony was generally consistent with PO S█████ although PO Keegan testified that he did not touch Mr. B█████ arm before Mr. B█████ pushed him, and he did not know if PO S█████ touched Mr. B█████

PO R█████ testified that either PO Keegan or PO S█████ he could not remember which—moved to take Mr. B█████ hand out of his pocket but PO R█████ was not able to see if the officer actually touched Mr. B█████ before Mr. B█████ pushed the officer away and ran.

Mr. B█████ medical records do not document any injury to his neck (BR 11).

Sgt. M█████ testified that she interviewed Mr. B█████ at Jamaica Hospital approximately nine hours after the incident (BR 09), and Mr. B█████ had marks on his neck.

While Sgt. M█████ was at the hospital, her operator, Police Officer R█████ D█████ took a photo of Mr. B█████ neck that shows a mark, but it is unclear from the photo whether the mark is from a recent injury or if it is a scar that predated the incident (BR 15).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. Patrol Guide Procedure, 221-01 (BR 13).

PO Keegan testified that he had not yet touched Mr. B█████ when Mr. B█████ pushed the officers away, and PO S█████ and PO R█████ could not describe how or whether PO Keegan

touched Mr. B. As PO Keegan's testimony conflicts with Mr. B and no one else could speak to the allegation, it is recommended that **allegation D be closed as unsubstantiated.**

Each officer denied or did not recall seeing PO S make contact with Mr. B neck. The photos of Mr. B that were taken after the incident show a mark, but the mark is not conclusively from a chokehold or from a recent incident. As PO S denied touching Mr. B neck, the other officers did not see whether PO S touched Mr. B neck, Mr. B medical records do not document an injury to his neck, and the photos showing the injury that Sgt. M observed are inclusive, it is recommended that **allegation E be closed as unsubstantiated.**

**Allegation F: Force: Police Officer Sean Keegan used physical force against A B**

Mr. B testified that he stopped running about halfway down the block on Atkins Avenue, dropped to his knees, and put his hands in the air. PO S and PO Keegan pursued him on foot and reached him before PO R who was driving. When they reached him, PO Keegan (identified by Mr. B as the officer who pursued him on foot but did not handcuff him) punched Mr. B at least three times on the left side of his face, giving him a black eye. Mr. B fell forward after he was hit and hit the right side of his face on the ground, but the officers had not pushed his face into the ground. PO S pulled his arms behind his back and handcuffed him. PO Keegan and PO S pulled Mr. B up by his arms because he could not stand or walk on his own after he was hit. After the incident, Mr. B face was swollen on the left side, his left eye was bruised, his right eye was swollen, and he had a scratch on his neck. He went to Center later that day and was given a CAT scan and an eye exam. Mr. B was unable to read the letters on the eye exam because his vision was too blurry, and he was instructed to go see an eye doctor, but he had not done so as of the date of his interview.

PO Keegan testified that PO S fell while they were chasing Mr. B. When they were approximately 250 yards from where Mr. B had started running, PO Keegan got closer to Mr. B. Mr. B turned around as if to change direction and PO Keegan ran into him, hitting his chest against Mr. B chest or side. PO Keegan and Mr. B fell to the ground. PO Keegan fell forward and used his hands to stop himself, but he did not know how Mr. B landed. PO S reached them and handcuffed Mr. B shortly after. The officers did not punch Mr. B or hit his face with anything, and PO Keegan did not see anything happen to Mr. B that could have injured his face.

PO S testified that he began chasing Mr. B on foot then tripped and fell. PO Keegan and Mr. B turned a corner and disappeared from PO S view. PO S got up and ran toward them. By the time he could see them again a few seconds later, PO Keegan and Mr. B were about halfway farther down the block on Atkins Avenue and both were lying on the ground. PO Keegan was lying on top of Mr. B with his chest down, but PO S could not recall how Mr. B was positioned. PO S had not seen how either got to the ground. When he reached them, PO S pushed PO Keegan to the side and handcuffed Mr. B. The officers did not punch Mr. B or hit his face with anything and PO S did not see anything happen that could have injured Mr. B face. Mr. B did not appear to have any injuries, nor did he complain of any pain or injuries.

PO R testified that he chased Mr. B briefly on foot then got into the car to pursue him. PO R had to drive around the block and lost sight of his partners and Mr. B for at least one or two minutes. When he saw them again, Mr. B was standing up and was

handcuffed; PO R [REDACTED] did not see his partners use force against Mr. B [REDACTED] or see Mr. B [REDACTED] on the ground.

Sgt. M [REDACTED] testified that Mr. B [REDACTED] had a black eye when she interviewed him approximately nine hours after the incident.

While Mr. B [REDACTED] was at the hospital approximately nine hours after the incident, PO D [REDACTED] took two photos of Mr. B [REDACTED] face that clearly show bruising around his left eye (BR 16 and BR 17).

The TRI reports filed by Sgt. M [REDACTED] state that two unidentified officers used hand-strikes during the incident.

Mr. B [REDACTED] medical records from [REDACTED] Hospital from approximately ten hours after the incident indicate that the soft tissue of his left eye was swollen (BR 11). He was diagnosed with a hematoma to his left eye. His medical records also indicate that he told hospital staff that police officers asked for his ID, then when he reached into his pocket to get it, they thought he had a weapon. While the narrative Mr. B [REDACTED] provided at the hospital is condensed, the records indicate that he told hospital staff that officers punched and pushed him.

Sgt. M [REDACTED] filed this complaint with IAB, during which time she relayed that Mr. B [REDACTED] had testified to an officer punching and choking him (BR 12).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. Patrol Guide Procedure, 221-01.

According to the officers' testimony, PO S [REDACTED] and PO R [REDACTED] were not in a position to see whether PO Keegan punched Mr. B [REDACTED] when he caught up to him. Though PO Keegan denied punching Mr. B [REDACTED] Sgt. M [REDACTED] photos of Mr. B [REDACTED] and Mr. B [REDACTED] medical records all confirm Mr. B [REDACTED] testimony that he had a black eye. As Mr. B [REDACTED] testimony in the investigation was consistent with statements he provided to Sgt. M [REDACTED] and to hospital staff, each officer testified that nothing happened that could have injured Mr. B [REDACTED] face, and Mr. B [REDACTED] had injuries consistent with being punched in the face, a preponderance of the evidence indicates that PO Keegan punched Mr. B [REDACTED]. As the officers did not have a reasonable suspicion to stop Mr. B [REDACTED] or chase after him and PO Keegan had no reason to suspect that Mr. B [REDACTED] was armed aside from a rectangular bulge, it was not reasonable under the circumstances for PO Keegan to punch Mr. B [REDACTED] face. It is therefore recommended that **allegation F be closed as substantiated.**

**Allegation G: Abuse of Authority: An officer frisked A [REDACTED] B [REDACTED]**

**Allegation H: Abuse of Authority: An officer searched A [REDACTED] E [REDACTED]**

Mr. B [REDACTED] testified that after the officers pulled him up, one of the officers – he thought it was probably PO R [REDACTED] – patted down his waist, chest, and legs, then entered both of his front pockets. The officer pulled out Mr. B [REDACTED] phone and ID then put the phone back in his pocket. PO R [REDACTED] looked up Mr. B [REDACTED] name on his cell phone, then the officers let Mr. B [REDACTED] go without giving him a summons or arresting him.

PO S [REDACTED] testified that he and PO Keegan pulled Mr. B [REDACTED] off the ground. PO R [REDACTED] arrived in the car sometime after they had pulled Mr. B [REDACTED] to his feet. One of the officers frisked Mr. B [REDACTED] entire body from his ankles to his shoulders. Mr. B [REDACTED] was frisked in places that the officers did not see bulges because he was in custody and could be arrested, and the officers





- [REDACTED]
- PO Keegan has been a member of the service for four years and has had eight other allegations pled against him in five cases. The following allegations reflect a pattern applicable in this case:
  - Two physical force allegations were pled against him, one in CCRB 201409458 that was unfounded and one in CCRB 201509029 that was closed as victim uncooperative.
  - One stop allegation was pled against him in CCRB 201708016 that was closed as complaint withdrawn.
- [REDACTED]

**Mediation, Civil and Criminal Histories**

- [REDACTED]
- [REDACTED]
- [REDACTED]

Squad No.: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date